

PART IV – REPRESENTATIONS AND INSTRUCTIONS

SECTION K

**REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF
OFFERORS OR QUOTES**

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SECTION K

**REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF
OFFERORS OR QUOTES**

**K.1 FAR 52.204-8 ANNUAL REPRESENTATIONS AND CERTIFICATIONS
(JAN 2006)**

- (a) (1) The North American Industry Classification System (NAICS) code for this acquisition is 561210.
- (2) The small business size standard is \$32.5 million.
- (3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.
- (a) (1) If the clause at 52.204-7, Central Contractor Registration, is included in this solicitation, paragraph (c) of this provision applies.
- (2) If the clause at 52.204-7 is not included in this solicitation, and the Offeror is currently registered in CCR, and has completed the ORCA electronically, the Offeror may choose to use paragraph (c) of this provision instead of completing the corresponding individual representations and certifications in the solicitation. The Offeror shall indicate which option applies by checking one of the following boxes:
 - ☐ (i) Paragraph (c) applies.
 - ☐ (ii) Paragraph (c) does not apply and the Offeror has completed the individual representations and certifications in the solicitation.
- (b) The Offeror has completed the annual representations and certifications electronically via the Online Representations and Certifications Application (ORCA) website at <http://orca.bpn.gov>. After reviewing the ORCA database information, the Offeror verifies by submission of the offer that the representations and certifications currently posted electronically have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201); except for the changes identified below [Offeror to insert changes, identifying change by clause number, title, date]. These amended representation(s) and/or

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certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

FAR Clause #	Title	Date	Change
_____	_____	_____	_____

Any changes provided by the Offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on ORCA.

K.2 FAR 52.209-5 CERTIFICATION REGARDING RESPONSIBILITY MATTERS (DEC 2008)

(a) (1) The Offeror certifies, to the best of its knowledge and belief, that—

(i) The Offeror and/or any of its Principals—

(A) Are _____ are not _____ presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have _____ have not _____, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(C) Are _____ are not _____ presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision;

(D) Have _____, have not _____, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

(1) Federal taxes are considered delinquent if both

of the following criteria apply:

- (i) *The tax liability is finally determined.*
The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
- (ii) *The taxpayer is delinquent in making payment.* A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(2) *Examples.*

- (i) The taxpayer has received a statutory notice of deficiency, under I.R.C. § 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.
- (ii) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. § 6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability.

This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(iii) The taxpayer has entered into an installment agreement pursuant to I.R.C. § 6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(iv) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

(ii) The Offeror has _____ has not _____, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principal," for the purposes of this certification, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (*e.g.*, general manager; plant manager; head of a subsidiary, division, or business segment; and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the

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Contracting Officer may render the Offeror nonresponsible.

- (d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- (e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default

K.3 FAR 52.222-22 PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (FEB 1999)

The offeror represents that—

- (a) It _____ has, _____ has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation;
- (b) It _____ has, _____ has not filed all required compliance reports; and
- (c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

K.4 FAR 52.230-1 COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION. (OCT 2008)

Note: This notice does not apply to small businesses or foreign governments. This notice is in three parts, identified by Roman numerals I through III.

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract. If the offeror is an educational institution, Part II does not apply unless the contemplated contract will be subject to full or modified CAS coverage pursuant to 48 CFR 9903.201-2(c)(5) or 9903.201-2(c)(6), respectively.

I. DISCLOSURE STATEMENT—COST ACCOUNTING PRACTICES AND CERTIFICATION

- (a) Any contract in excess of \$650,000 resulting from this solicitation will be subject to the requirements of the Cost Accounting Standards Board (48 CFR

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Chapter 99), except for those contracts which are exempt as specified in 48 CFR 9903.201-1.

- (b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR Chapter 99 must, as a condition of contracting, submit a Disclosure Statement as required by 48 CFR 9903.202. When required, the Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

Caution: In the absence of specific regulations or agreement, a practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting contract performance cost data.

- (c) Check the appropriate box below:

☐ (1) *Certificate of Concurrent Submission of Disclosure Statement.* The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows:

- (i) Original and one copy to the cognizant Administrative Contracting Officer (ACO) or cognizant Federal agency official authorized to act in that capacity (Federal official), as applicable; and
- (ii) One copy to the cognizant Federal auditor.

(Disclosure must be on Form No. CASB DS-1 or CASB DS-2, as applicable. Forms may be obtained from the cognizant ACO or Federal official and/or from the loose-leaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement: _____

Name and Address of Cognizant ACO or Federal Official Where Filed:

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

☐ (2) *Certificate of Previously Submitted Disclosure Statement.* The offeror hereby certifies that the required Disclosure Statement was filed as follows:

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Date of Disclosure Statement: _____

Name and Address of Cognizant ACO or Federal Official Where Filed:

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable Disclosure Statement.

☐ (3) *Certificate of Monetary Exemption.* The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling \$50 million or more in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

☐ (4) *Certificate of Interim Exemption.* The offeror hereby certifies that (i) the offeror first exceeded the monetary exemption for disclosure, as defined in (3) of this subsection, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with 48 CFR 9903.202-1, the offeror is not yet required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, the offeror will immediately submit a revised certificate to the Contracting Officer, in the form specified under paragraph (c)(1) or (c)(2) of Part I of this provision, as appropriate, to verify submission of a completed Disclosure Statement.

Caution: Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of \$50 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

II. COST ACCOUNTING STANDARDS—ELIGIBILITY FOR MODIFIED CONTRACT COVERAGE

If the offeror is eligible to use the modified provisions of 48 CFR 9903.201-2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

☐ The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 48 CFR 9903.201-2(b) and

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certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than \$50 million in awards of CAS-covered prime contracts and subcontracts. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

Caution: An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of \$50 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of \$50 million or more.

III. ADDITIONAL COST ACCOUNTING STANDARDS APPLICABLE TO EXISTING CONTRACTS

The offeror shall indicate below whether award of the contemplated contract would, in accordance with paragraph (a)(3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

o Yes o No

K.5 FAR 52.234-3 Notice of Earned Value Management System - Post Award IBR (JUL 2006)

- (a) The Offeror shall provide documentation that the Cognizant Federal Agency has determined that the proposed earned value management system (EVMS) complies with the EVMS guidelines in ANSI/EIA Standard - 748 (current version at time of solicitation).
- (b) If the Offeror proposes to use a system that has not been determined to be in compliance with the requirements of paragraph (a) of this provision, the Offeror shall submit a comprehensive plan for compliance with the EVMS guidelines.
 - (1) The plan shall—
 - (i) Describe the EVMS the Offeror intends to use in performance of the contracts;
 - (ii) Distinguish between the Offeror's existing management system and modifications proposed to meet the guidelines;
 - (iii) Describe the management system and its application in terms of the EVMS guidelines;

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- (iv) Describe the proposed procedure for administration of the guidelines, as applied to subcontractors; and
 - (v) Provide documentation describing the process and results of any third-party or self-evaluation of the system's compliance with the EVMS guidelines.
 - (2) The Offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.
 - (3) The Government will review and approve the Offeror's plan for an EVMS before contract award.
 - (4) The Offeror's EVMS plan must provide milestones that indicate when the Offeror anticipates that the EVM system will be compliant with the ANSI/EIA Standard -748 guidelines.
- (c) Offerors shall identify the major subcontractors, or major subcontracted effort if major subcontractors have not been selected, planned for application of the guidelines. The prime Contractor and the Government shall agree to subcontractors selected for application of the EVMS guidelines.

K.6 DEAR 952.209-8 ORGANIZATIONAL CONFLICTS OF INTEREST-DISCLOSURE. (JUN 1997)

- (a) Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.
- (b) An offeror notified that it is the apparent successful offeror shall provide the statement described in paragraph (c) of this provision. For purposes of this provision, "apparent successful offeror" means the proposer selected for final negotiations or, where individual contracts are negotiated with all firms in the competitive range, it means all such firms.
- (c) The statement must contain the following:
 - (1) A statement of any past (within the past twelve months), present, or currently planned financial, contractual, organizational, or other interests relating to the performance of the statement of work. For contractual interests, such statement must include the name, address, telephone number of the client or client(s), a description of the services rendered to the previous client(s), and the name of a responsible officer or employee of the offeror who is knowledgeable about the

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services rendered to each client, if, in the 12 months preceding the date of the statement, services were rendered to the Government or any other client (including a foreign government or person) respecting the same subject matter of the instant solicitation, or directly relating to such subject matter. The agency and contract number under which the services were rendered must also be included, if applicable. For financial interests, the statement must include the nature and extent of the interest and any entity or entities involved in the financial relationship. For these and any other interests enough such information must be provided to allow a meaningful evaluation of the potential effect of the interest on the performance of the statement of work.

- (2) A statement that no actual or potential conflict of interest or unfair competitive advantage exists with respect to the advisory and assistance services to be provided in connection with the instant contract or that any actual or potential conflict of interest or unfair competitive advantage that does or may exist with respect to the contract in question has been communicated as part of the statement required by (b) of this provision.

Failure of the offeror to provide the required statement may result in the offeror being determined ineligible for award. Misrepresentation or failure to report any fact may result in the assessment of penalties associated with false statements or such other provisions provided for by law or regulation.

**K.7 DEAR 970.5223-3 AGREEMENT REGARDING WORKPLACE
SUBSTANCE ABUSE PROGRAMS AT DOE FACILITIES (DEC 2000)**

- (a) Any contract awarded as a result of this solicitation will be subject to the policies, criteria, and procedures of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites.
- (b) By submission of its offer, the officer agrees to provide to the contracting officer, within 30 days after notification of selection for award, or award of a contract, whichever occurs first, pursuant to this solicitation, its written workplace substance abuse program consistent with the requirements of 10 CFR part 707.
- (c) Failure of the offeror to agree to the condition of responsibility set forth in paragraph (b) of this provision renders the offeror unqualified and ineligible for award.

K.8 DEAR 970.5227-7 ROYALTY INFORMATION (DEC 2000)

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- (a) Cost or charges for royalties. If the response to this solicitation contains costs or charges for royalties totaling more than \$250, the following information shall be included in the response relating to each separate item of royalty or license fee:

- (1) Name and address of licensor;
- (2) Date of license agreement;
- (3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;
- (4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;
- (5) Percentage or dollar rate of royalty per unit;
- (6) Unit price of contract item;
- (7) Number of units; and
- (8) Total dollar amount of royalties.

- (b) Copies of current licenses. In addition, if specifically requested by the Contracting Officer before execution of the contract, the offeror shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents or other basis upon which the royalty may be payable.

K.9 AGREEMENT TO USE NON-FEDERAL EVALUATORS

DOE may employ non-Federal evaluators (including employees of DOE contractors) to assist in evaluating proposals submitted in response to Solicitation No. **DE-RP30-09CC40015**. All such non-Federal evaluators shall be required to sign appropriate non-disclosure and conflict of interest statements prior to any such engagement. By submission of signed Offer under this solicitation, the offeror consents to such review by non-Federal evaluators.

K.10 COST AND FEE PROPOSAL CERTIFICATION

The Government publicly furnished certain cost, pricing, and/or estimating information regarding contract activities and requirements during the solicitation phase of this contract. By submitting a signed offer under this Solicitation, the offeror certifies that:

- (a) It fully recognizes that such information was not warranted in any manner by the Government as to its accuracy or validity, and was for information only;
- (b) The Government does not represent such information as a preferred price offer under the solicitation; and
- (c) Irrespective of the Government-furnished information, the offeror's estimated cost and estimated fee, upon which this contract award is based, was

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independently and fully derived from the offeror's own estimating methods, that the offeror assumes full and complete ownership of its offered estimated cost and estimated fee, and that it fully acknowledges that the Government makes no warranties, express or implied, as to the completeness or accuracy of the Government-furnished pricing and estimating information.

K.11 SOLICITATION CERTIFICATION

By submitting its signed offer, the offeror represents its understanding that solicitation number DE-RP30-09CC40015 represents the current and complete contracting requirements of the Government for the Operation of DUF6 contract. This solicitation supersedes in its entirety any prior representations from the Government or attributed to the Government, including, but not necessarily limited to; any information formally provided by the Government prior to release of this solicitation; remarks made by the Government during, or reported as a result of a pre-solicitation conference; and any information or conjecture presented by the media, or any other source, on the Governments requirements for this solicitation.

K.12 SIGNATURE/CERTIFICATION

- (a) By completing and submitting a proposal, the offeror certifies, under penalty of law, that the representations and certifications are accurate, current, and complete. The offeror further certifies that it will notify the Contracting Officer of any changes to these representations and certifications. The representations and certifications made by the offeror, as contained herein, concern matters within the jurisdiction of an agency of the United States and the making of false, fictitious, or fraudulent representation or certification may render the maker subject to prosecution under 18 U.S.C. 1001.

Typed name and title of the officer or employee responsible for the offer

Signature of the authorized officer or employee responsible for the offer

Date of Execution

Name of Organization

Street

City, State

Solicitation Number